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OFFICE OF PETITIONS PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
: Examiner: J. Maples
TAKAO OGURA, et al.)
: Group Art Unit: 1745
Application No.: 09/676,090)
:
Filed: October 2, 2000)
:
For: RECHARGEABLE LITHIUM)
BATTERY AND PROCESS)
FOR THE PRODUCTION)
THEREOF : December 2, 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR CORRECTED NOTICE OF ALLOWANCE AND
APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)

Sir:

Applicants have received a Notice of Allowance And Fees Due in the above-identified application which incorrectly identifies the title of the invention as "RECHARGEABLE LITHIUM BATTERY". The correct title should read -- RECHARGEABLE LITHIUM BATTERY AND PROCESS FOR THE PRODUCTION THEREOF--. Accordingly, applicants respectfully request a Corrected Notice of Allowance indicating the correct title.

In addition, Applicants hereby request under 37 C.F.R. § 1.705(b) reconsideration and recalculation of the patent term adjustment (PTA) for the above-identified application. Herewith is a check for \$200.00 for the fee set forth in 37 C.F.R. §

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1.18(e). Please charge any deficiency in this fee or credit any overpayment to deposit account number 06-1205.

For at least the following reasons, this application is believed to be entitled to a PTA of 67 days.

FACTS

- 1) A Notice Of Allowance And Fee(s) Due Form was mailed October 21, 2003 in connection with the above-identified application.
- 2) The present application is not subject to any terminal disclaimer.
- 3) The application was filed on October 2, 2000 and a first Office Action was mailed on May 22, 2002, establishing a PTO-delay of 171 days.
- 4) On September 30, 2002 a Response After Non-Final Office Action was filed along with a Petition For Extension Of Time for one month, this established a 39 day Applicant-delay.
- 5) Shortly thereafter, a Notice Of Allowance was issued on October 18, 2002 in response to which Applicants' filed the Request For Continued Examination (RCE) with an accompanying Information Disclosure Statement (IDS) as the required submission, on January 28, 2003. For this, the Patent Application Information Retrieval (PAIR) system indicates an Applicant-delay of one-hundred twenty (120) days was charged to the applicant.
- 6) In response to a non-final rejection mailed on February 24, 2003, Applicants' filed a Response along with a Petition For Extension Of Time on July 28, 2003. In connection with this Response the PAIR system indicates an Applicant delay of sixty-five (65) days.

ARGUMENTS

7) Applicants believe the PTO incorrectly treated the Information Disclosure Statement accompanying the Request For Continued Examination as an “other paper” under 37 C.F.R. § 1.704(c)(10), and wrongly assessed one-hundred twenty (120) days of Applicant delay.

8) As discussed in the article “Clarification Of 37 C.F.R. § 1.704(c)(10) Reduction Of Patent Term Adjustment For Certain Types Of Papers Filed After A Notice Of Allowance Has Been Mailed” put out by the PTO, only certain submissions would be considered a failure to engage in reasonable efforts to conclude prosecution after a Notice Of Allowance is sent. Those submissions that do not cause substantial interference and delay in patent issue process are not considered a failure to engage in reasonable to conclude processing or examination of an Application.

9) It is believed that the Information Disclosure Statement recorded in the PAIR system on January 28, 2003, should not be considered a failure to engage in reasonable effort to conclude prosecution. RCE’s require a submission in order to be proper. In this case, the Information Disclosure Statement served as the required submission that accompanied the RCE and consequently is not seen to be a failure to engage in reasonable efforts to conclude prosecution.

10) Consequently, Applicants’ request reconsideration of the patent term adjustment and removal of the determination of one-hundred twenty days (120) Applicant-delay for filing of the Information Disclosure Statement.

CONCLUSION

In view of the above noted deficiencies, Applicants request a new Notice of Allowance, listing the correct title, and a new Determination of Patent Term Adjustment, listing a Patent Term Adjustment of 67 days.

Applicants' undersigned attorney may be reached in our Costa Mesa, California office at (714) 540-8700. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,


Attorney for Applicants

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